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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 763

PAUL M. BROPHY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I

Petition

Petitioner prays that writ of certiorari issue to review the judgment of the United Sates Court of Appeals for the Ninth Circuit, entered upon the appeal of the above named petitioner against such petitioner and in favor of the above named respondent.

II

Citations to Opinions Below

1. The opinion of the United States District Court for the District of Arizona has not been reported. It is included within the "Order for Judgment" found at page 103

of the Transcript of Record herein and annexed hereto as "Exhibit A."

2. The opinion of the United States Court of Appeals for the Ninth Circuit is now reported at ——— F. 2d ———. A copy is hereto annexed and marked "Exhibit B."

III

Jurisdiction

1. Plaintiff in the District Court (appellee in the Court of Appeals; respondent here) invoked the jurisdiction of the District Court under Section 1345 of Title 28 of the United States Code.

2. Appellant in the Court of Appeals (defendant in the District Court; petitioner here) invoked the appellate jurisdiction of that Court under Section 1291 of Title 28 of the United States Code.

3. The judgment of the Court of Appeals was entered February 8, 1956.

4. It is believed the Supreme Court of the United States has jurisdiction to review such judgment under Section 1254 (1) of Title 28 of the United States Code.

IV

Questions Presented

As appears to petitioner, the questions that may be determined upon the review here sought are:

1. Does the "Landowners' Agreement" (Exhibit A, Tr. 20-50) prohibit the installation and operation of the petitioner's well and pump; or does it merely provide they may be prohibited or their use restricted by regulation or order of the Secretary of the Interior?

2. Has there been any valid regulation or order of the Secretary of the Interior restricting or prohibiting the use of such well and pump?

V

Statement of the Case

This action was brought by the United States (plaintiff in the District Court; appellee in the Court of Appeals; and respondent here) to enjoin the defendant (appellant in the Court of Appeals and petitioner here) from (a) using a well on land owned by him and pumping water therefrom for irrigation of such land; (b) drilling new wells; and (c) pumping water for irrigation of other lands owned by him within the boundaries of the San Carlos Federal Irrigation Project.

The United States District Court for the District of Arizona awarded plaintiff the relief sought; the judgment was affirmed upon appeal to the United States Court of Appeals for the Ninth Circuit.

Review is sought by certiorari because of the importance of the question to the owners of real property within the San Carlos Irrigation & Drainage District (San Carlos Federal Irrigation Project).

VI

Reasons for Granting the Writ

The construction of the "Landowners' Agreement" referred to in the opinion of the Court of Appeals is, as believed by petitioner and as above suggested, of sufficient importance to the owners of property in the San Carlos Irrigation & Drainage District to warrant a review by the Supreme Court of the United States of the decision and judgment of the Court of Appeals for the Ninth Circuit.

The pertinent provision of the "Landowners' Agreement" upon which the plaintiff (respondent) relied for an

injunction is found upon pages 32 and 33 of the Transcript of the Record, thus:

> "All underground and also all diffused surface water under, in or upon the white lands embraced in the said San Carlos project, except such as may from time to time be needed and utilized by the owners of such lands for their domestic water supply, shall at all times be available to said project for development and use as an irrigation water supply for said project; and the undersigned promises and agrees, in respect to his land which shall be taken into said project, to give to the United States or said project the necessary rights of way for the use of such waters and agrees further not to drill or operate wells in any other way for use or permit others to use said waters for irrigation contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior with relation to said waters on said project.

Plaintiff (respondent) contended in the trial Court, as well as in the appellate Court that such provision should be read as though separated into parts and numbered as follows:

> "(1) All underground and also all diffused surface water under, in or upon the white lands embraced in the said San Carlos Project, except such as may from time to time be needed and utilized by the owners of such lands for their domestic water supply, shall at all times be available to said project for development and use as an irrigation water supply for said project;
>
> "(2) and the undersigned promises and agrees, in respect to his land which shall be taken into said project, to give to the United States or said project the necessary rights of way for the use of such waters;

"(3) and agrees further not to drill or operate wells in any other way;

"(4) or use or permit others to use said waters for irrigation contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior with relation to said waters on said project."

Defendant (petitioner here) was of the opinion such numbering and division was not proper, as the instrument was plain upon its face as written and contained no prohibition against the use of the irrigation facilities in question unless the Secretary of the Interior would so direct, but if punctuation and separation into clauses should be required, the sentence should be thus punctuated and divided:

"(1) All underground and also all diffused surface water under, in or upon the white lands embraced in the said San Carlos Project, except such as may from time to time be needed and utilized by the owners of such lands for their domestic water supply, shall at all times be available to said project for development and use as an irrigation water supply for said project;

"(2) and the undersigned promises and agrees, in respect to his land which shall be taken into said project, to give to the United States or said project the necessary rights of way for the use of such water;

"(3) and further agrees not to drill or operate wells in any other way, or use or permit others to use said waters for irrigation, contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior with relation to said waters on said project."

Counsel for respondent in both the trial court and appellate court also took the position that the use of the petitioner's pump and well violated a decree of the United States District Court for the District of Arizona in a cause

entitled "Equity-59-Globe". Petitioner unsuccessfully contended in both of the lower courts that if he had violated any provision of such decree the remedy of respondent was not by an independent action for injunction, but by a motion for enforcement of the decree, relying upon Taylor v. Tempe Irrigating Canal Company, 21 Ariz. 574, 193 P. 12.

To petitioner it appears the matter should now be definitely settled, not only by reason of his rights in the premises, but because of those of other landowners who have invested in wells and pumps upon their own lands and who use the same for the purposes of irrigation.

VII

Conclusion

For the foregoing reasons it is most respectfully requested the petition for a writ of certiorari should be granted.

Respectfully submitted,

ALLAN K. PERRY,
Suite 858 First Natl Bank Bldg.,
Phoenix, Arizona,
Attorney for Petitioner.

APPENDIX

"EXHIBIT A"

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Civ-1703-Phx.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

PAUL M. BROPHY, DEFENDANT

ORDER FOR JUDGMENT

Defendant's construction of the Landowners' Agreement is not tenable. By this agreement all underground water, except such as may be necessary for domestic supply, is to be used for the advantage of the project. The Secretary of the Interior is without authority to alter this vital stipulation, nor is official action called for on his part when as in this case, the promise is ignored.

Judgment will be for the United States and against the defendant, Paul M. Brophy.

Dated: August 24, 1954 at Portland, Oregon.

DAVE W. LING,
U. S. District Judge.

"EXHIBIT B"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14,718 Feb. 8, 1956

PAUL M. BROPHY, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court, District of Arizona

Before: DENHAM, Chief Judge, and POPE and LEMMON, Circuit Judges.

DENHAM, Chief Judge:

Brophy, an owner of land in the San Carlos Irrigation and Drainage District of Arizona (hereafter referred to as the San Carlos District), appeals from a decree of the United States District Court for the District of Arizona which ordered him to cease pumping water for irrigation purposes from a well no his land. Brophy contends that his right to pump water for such a purpose is controlled entirely by the Landowners' Agreement with the Secretary of the Interior signed in 1927 which brought his land into the San Carlos District and that the agreement allows him to pump his own water for any purpose until ordered not to do so by the Secretary of the Interior.

The San Carlos Irrigation Project was created by Congress in 1916 primarily to make water available for the irrigation of 50,000 acres of Indian lands. To make the project feasible economically it was necessary to also bring

in 50,000 acres of non-Indian land. The available surface water would irrigate only 80,000 acres, and so the original plans called for water for 20,000 acres to come from well and pumped water from underground sources. Congress passed an appropriation in 1928 [45 Stat. 200] to provide for a pumping and drainage system authorizing the development of an electric power plant at Coolidge Dam to supply power to operate such a system. Many wells and pumps have been put in operation in the San Carlos District since then. Under orders of the Secretary of the Interior the San Carlos Irrigation District Project Engineer each year allocates to each landowner the amount of water he may pump for irrigation purposes, deducting this amount from the landowner's share of stored water. If Brophy's construction of the contract is correct, he could pump very large quantities of water from the common pool under the lands beyond the allocated amount and by this unequal share to that extent diminish the waters to be used by the Indian lands. This appears contrary to the Congressional intent.

> ". . . the Secretary of the Interior, . . . is hereby authorized to construct a dam across the Canyon of the Gila River near San Carlos, Arizona, as a part of the San Carlos irrigation project, . . . for the purpose, first, of providing water for the irrigation of lands alloted to Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water and, second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served with water impounded by said dam *without diminishing the supply necessary for said Indian lands.*"[1]

---

[1] 43 Stat. 475-476 (1924).

Brophy relies on a provision of the Landowners' Agreement with the Secretary of the Interior which Brophy's predecessor in interest had executed in 1927. That provision is as follows:

> "All underground . . . water under . . . the white lands embraced in the said San Carlos project, except such as may from time to time be needed and utilized by the owners of such lands for their domestic water supply, shall at all times be available to said project for development and use as an irrigation water supply for said project; and the undersigned promises and agrees, in respect to his land which shall be taken into said project, to give to the United States or said project the necessary rights of way for the use of such waters *and agrees further not to drill or operate wells in any other way or use or permit others to use said waters for irrigation contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior with relation to said waters on said project.*" [Emphasis added.]

Brophy asks this court to construe this provision to read as follows:

> The landowner ". . . agrees . . . not to drill or operate wells in any other way . . . contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior . . ."

On the other hand, the San Carlos District asserts that the clause should be construed as follows:

> The landowner ". . . agrees . . . not to [1] drill or operate wells in any other way or [2] use or permit others to use said waters for irrigation contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior . . ."

Under such a construction Brophy has agreed not to drill or operate the wells in any other way than for his domestic water supply and the amount for irrigation permitted by the Secretary's agent. There would be no necessity for an order to Brophy to stop operating his well for his irrigation purposes beyond the allowed amount.

We agree with the Government's construction. An earlier provision of the Landowners' Agreement states:

> "All Indian and white lands which shall be in said San Carlos Project and under said Coolidge Reservoir shall be entitled *to share equally* in all of the stored and pumped water of said project in so far as that shall be physically feasible, and said lands shall share equally in all of the water of said project of every nature as long as the stored and unstored water supply for said project shall be sufficient for the project's needs, and as far as that shall be physically feasible;" [Emphasis added.]

Brophy's interpretation of the contract would violate its provision for equal sharing of the available water and the intent of Congress in enacting the underlying legislation to which we have above referred.

The judgment is affirmed.

(Endorsed:) Opinion. Filed Feb. 8, 1956.

PAUL P. O'BRIEN,
Clerk.

"EXHIBIT C"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14,718

PAUL M. BROPHY, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT

Appeal from the United States District Court for the District of Arizona.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed): Judgment.

Filed and Entered: February 8, 1956.

PAUL O'BRIEN,
Clerk.

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CITATIONS

Statutes:

Act of May 18, 1916, 39 Stat. 123	2, 10
Act of June 7, 1924, 43 Stat. 475	2, 8, 10
Act of March 7, 1928, 45 Stat. 200	2, 14
Act of March 7, 1947, 61 Stat. 8	2, 15

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 763

PAUL M. BROPHY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the United States District Court for the District of Arizona. Its order for judgment appears at R. 103; its findings of fact, conclusions of law, and decree appear at R. 109–117. The opinion of the United States Court of Appeals for the Ninth Circuit (Pet. 8–11) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 8, 1956 (R. 155). The petition for a writ of certiorari was filed on March 14, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the "Landowners' Agreement" between the United States and the petitioner, when viewed in the light of the "Repayment Contract Between the United States and the San Carlos Irrigation and Drainage District, Arizona" and the Congressional enactments authorizing and providing funds for the construction of the San Carlos Federal Irrigation Project, prohibits the installation and operation by petitioner of a well and pump utilized to irrigate his lands.

STATUTES INVOLVED

The pertinent provisions of the Act of May 18, 1916, 39 Stat. 123, 130; the Act of June 7, 1924, 43 Stat. 475–476; the Act of March 7, 1928, 45 Stat. 200, 210–212; and the Act of March 7, 1947, 61 Stat. 8, are set forth in the Appendix, *infra*, pp. 10–16.

STATEMENT

This litigation involves the construction of the "Landowners' Agreement" (R. 20–50) entered into between the United States and the petitioner. Pursuant to that agreement, the predecessors in interest of petitioner and petitioner receive from the San Carlos Federal Irrigation Project[1] a

[1] This project was constructed pursuant to the Act of May 18, 1916, 39 Stat. 123, 130; the Act of June 7, 1924, 43 Stat. 475–476; the Act of March 7, 1928, 45 Stat. 200, 210–212; and the Act of March 7, 1947, 61 Stat. 8. See Appendix, *infra*, pp. 10–16.

supply of water for purposes of irrigation. See R. 110, Finding of Fact No. 1; R. 113, Finding of Fact No. 10.

Among other things, that contract provides (R. 38; Pet. 11):

> All Indian and white lands which shall be in said San Carlos project and under said Coolidge Reservoir shall be entitled to share equally in all of the stored and pumped water of said project in so far as that shall be physically feasible, and said lands shall share equally in all of the water of said project of every nature as long as the stored and unstored water supply for said project shall be sufficient for the project's needs, and as far as that shall be physically feasible; * * *.

The contract also provides (R. 32–3):

> All underground and also all diffused surface water under, in or upon the white lands embraced in the said San Carlos project, except such as may from time to time be needed and utilized by the owners of such lands for their domestic water supply, shall at all times be available to said project for development and use as an irrigation water supply for said project; and the undersigned promises and agrees, in respect to his land which shall be taken into said project, to give to the United States or said project the necessary rights of way for the use of such waters and agrees further not to drill or operate wells in any other way or use or permit

> others to use said waters for irrigation contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior with relation to said waters on said project.

Petitioner's lands are likewise subject to the "Repayment Contract" (R. 51–81) which, among other things, provides (R. 54):

> 7. The stored and pumped water of the San Carlos Project shall be deemed a common Project water supply in which all lands in the project and under the San Carlos Reservoir shall be entitled to share equally, and all such waters shall be distributed to the lands of the project as equitably as the physical conditions permit.

The lands are also embraced in the decree entered on or about the 29th day of June 1935 by the District Court in which this case was tried, in the case entitled *United States* v. *Gila Valley Irrigation District, et al.,* No. Equity 59–Globe, which provides in part (R. 113):

> VII. That all Indian lands and all white lands now or hereinafter designated by the Secretary of the Interior as within the San Carlos Project and under said San Carlos Reservoir shall be entitled to share equally in all of the stored and pumped water of said Project insofar as that shall be physically feasible, and said lands shall share equally in all of the water of said Project of every nature * * *.

Petitioner, in 1938, for purposes of irrigation drilled a well and installed a pump, deriving from that source waters in addition to those supplied him by the San Carlos Federal Irrigation Project pursuant to the "Landowners' Agreement" (R. 113, Finding of Fact No. 10). Though notified "to cease and desist his pumping for agricultural purposes," petitioner refused to comply with that request (R. 113–114, Finding of Fact No. 10). Upon petitioner's continued refusal to accede to the requests to cease pumping, the United States initiated this action to enjoin him. The matter was tried upon what amounted to an agreed statement of the foregoing facts (R. 119–132).

The court entered an order for judgment in favor of the United States on August 27, 1954 (R. 103). Thereafter, findings of fact and conclusions of law were entered (R. 109–116), together with a decree which ordered: "That the defendant [petitioner], his successors and assigns, will immediately cease and are perpetually enjoined, restrained and forbidden, from further operation of said irrigation well * * * and from pumping water therefrom: * * *" (R. 116).

In its conclusions of law, the court determined that: "The 'Landowners Agreement' itself, when construed in the light of the statutes and contracts providing for the construction of San Carlos Project, without any implementing orders or regulations made by the Secretary of the In-

terior, makes it unlawful for the defendant [petitioner] to drill or operate a well for irrigation purposes" (R. 115, Conclusion of Law No. 5). The court also declared that the pumping by petitioner was violative of the "Landowners' Agreement", causing and continuing to cause "the plaintiff [United States of America] irreparable injury with respect to which plaintiff has no adequate legal remedy" (R. 116, Conclusion of Law No. 7).

From that order for judgment and decree, petitioner appealed to the Court of Appeals for the Ninth Circuit, which affirmed.

ARGUMENT

1. There has been a clear unanimity in the disposition of the narrow contentions which petitioner now seeks to have this Court consider. The Secretary of the Interior, the District Court for the District of Arizona, and the Court of Appeals for the Ninth Circuit have each rejected the construction which petitioner places upon this particular "Landowners' Agreement" and have declared that when he pumps water from his well for the purpose of irrigation he violates that contract. Petitioner's only reason for requesting further review by this Court is that "the construction of the 'Landowners' Agreement' * * * is, * * * as above suggested, of sufficient importance to the owners of property in the San Carlos Irrigation & Drainage District

to warrant a review by the Supreme Court of the United States * * *" (Pet. 3). But the fact is that the Irrigation District filed with the Court of Appeals a brief as *amicus curiae* which fully supported the decision of the trial court, offering only a different mode of interpreting the contract.

Moreover, petitioner's opposition to the claim of the United States in this judicial proceeding appears to be highly technical since he admitted in the court below that the Secretary of the Interior could, by administrative order, direct him to shut down the very well which the United States has sought to enjoin him from using.[2] And the record is clear that he was notified on repeated occasions by the subordinates of the Secretary of the Interior to cease operating that well (R. 10–15, 111).

2. In addition, the decision below is clearly correct. Petitioner's sole contention is that he can lawfully continue to use the well until the Secretary of the Interior orders him, in a manner suitable to him, to cease to pump (Pet. 2), but it

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[2] In his opening brief below, at pp. 10–11, petitioner stated that "No litigation between the parties was necessary", and that, if the pump in question interfered with the rights of the United States, "* * * a simple order from the Secretary of the Interior would have afforded plaintiff [the United States] all the relief to which it could possibly have been entitled". Also, "To defendant [petitioner here] there appear substantial reasons for such supervision by the Secretary. A well at one location in the project might prove detrimental to the other landowners * * *."

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is plain that the "Landowner's Agreement", in and of itself, prohibits use of the well.

As the trial court emphasized, "the 'Landowners' Agreement' itself, when construed in the light of the statutes and contracts providing for the construction of the San Carlos Project, without any implementing orders or regulations made by the Secretary of the Interior, makes it unlawful for the defendant [petitioner here] to drill or operate a well for irrigation purposes" (R. 115, Conclusions of Law, No. 5). The Act of June 7, 1924 (43 Stat. 475–476, Appendix, *infra*, pp. 10–14) shows the concern of Congress with the rights of the Indians served by the Project. That statute authorized the Secretary of the Interior to construct a dam across the Gila River as part of the San Carlos Irrigation Project "for the purpose, first, of *providing water for the irrigation of lands allotted to Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water* and, second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served with water impounded by said dam *without diminishing the supply necessary for said Indian lands.*" The "Landowners' Agreement" provides for all lands *"to share equally"* and that water under, in, or upon the white lands in the Project shall "at all times be available to said project for develop-

ment and use as an irrigation water supply" (*supra*, p. 3). The "Repayment Contract" bears out this concept of equal and common sharing (*supra*, p. 4). [Emphasis added.]

In the light of these contractual and statutory objectives, petitioner's reading of the contract must necessarily fail. For, as the Court of Appeals pointed out (Pet. 9, 11): "If Brophy's [petitioner's] construction of the [landowners'] contract is correct, he could pump very large quantities of water from the common pool under the lands beyond the allocated amount and by this unequal share to that extent diminish the waters to be used by the Indian lands," and "Brophy's interpretation of the contract would violate its provision for equal sharing of the available water and the intent of Congress in enacting the underlying legislation to which we have above referred."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General
J. LEE RANKIN,
Assistant Attorney General.
WILLIAM H. VEEDER,
Attorney.

APRIL 1956.

APPENDIX

1. The Act of May 18, 1916, 39 Stat. 123, 130, provides in pertinent part as follows:

> For beginning the construction by the Indian Service, of a dam with a bridge superstructure and the necessary controlling works for diverting water from the Gila River for the irrigation of Indian land and Indian allotments on the Gila River Indian Reservation, Arizona, as recommended by the Board of Engineers of the United States Army in paragraph two hundred and seventeen of its report to the Secretary of War of February fourteenth, nineteen hundred and fourteen (House Document numbered seven hundred and ninety-one), $75,000, to be immediately available and to remain available until expended, reimbursable as provided in section two of the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page five hundred and twenty-two), the total cost not to exceed $200,000.

2. The Act of June 7, 1924, 43 Stat. 475–476, provides as follows:

> *An Act for the continuance of construction work on the San Carlos Federal irrigation project in Arizona, and for other purposes.*
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior, through the Indian Service, is hereby authorized to

construct a dam across the Canyon of the Gila River near San Carlos, Arizona, as a part of the San Carlos irrigation project, as contemplated in the report of the chief engineer of the Indian irrigation service submitted to the Commissioner of Indian Affairs on November 1, 1915, at a limit of cost of $5,500,000, for the purpose, first, of providing water for the irrigation of lands allotted to Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water and, second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served with water impounded by said dam without diminishing the supply necessary for said Indian lands: *Provided,* That the total cost of the project shall be distributed equally per acre among the lands in Indian ownership and the lands in public or private ownership that can be served from the waters impounded by said dam.

SEC. 2. That the construction charge assessed against the Indian lands shall be reimbursable to the Treasury of the United States on a per acre basis under such rules and regulations as the Secretary of the Interior may prescribe, and there is hereby created a lien against all such lands, which lien shall be recited in any patent issued therefor, prior to the reimbursement of the total amount chargeable against such land: *Provided,* That after said project is completed, the Secretary of the Interior is hereby authorized, in his discretion, with the approval of the Pima Indians, to sell, at public auction, at not less than the appraised value thereof, such surplus lands not now allotted within said Gila River Indian Reservation as he may determine to

be irrigable from return and drainage waters, the proceeds of such sales to be deposited in the Treasury to reimburse the United States in part for the construction charge assessed against the Indian lands.

SEC. 3. The Secretary of the Interior shall by public notice announce the date when water is available for lands in private ownership under the project, and the amount of the construction charge per irrigable acre against the same, which charge shall be payable in annual installments, the first installment to be 5 per centum of the total charge and be due and payable on the 1st day of December of the third year following the date of said public notice, the remainder of the construction charge, with interest on deferred amounts from date of said public notice at 4 per centum per annum, to be amortized by payment on each December 1st thereafter of 5 per centum of said remainder until the obligation is paid in full: *Provided,* That the operation and maintenance charges on account of land in private ownership or of land in Indian ownership operated under lease shall be paid annually in advance not later than March 1st, no charge being made for operation and maintenance for the first year after said public notice. It shall be the duty of the Secretary of the Interior to give such public notice when water is actually available for lands in private ownership.

SEC. 4. That no part of the sum provided for herein shall be expended for construction on account of any lands in private ownership until an appropriate repayment contract in accordance with the terms of this Act and, in form approved by the Secretary of the Interior, shall have

been properly executed by a district organized under State law, embracing the lands in public or private ownership irrigable under the project, and the execution thereof shall have been confirmed by decree of a court of competent jurisdiction, which contract, among other things, shall contain an appraisal approved by the Secretary of the Interior, showing the present actual bona fide value of all such irrigable lands fixed without reference to the proposed construction of said San Carlos Dam, and shall provide that until one-half the construction charges against said lands shall have been fully paid, no sale of any such lands shall be valid unless and until the purchase price involved in such sale is approved by the Secretary of the Interior, and shall also provide that upon proof of fraudulent representation as to the true consideration involved in any such sale, the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sale; and all public lands irrigable under the project shall be entered subject to the conditions of this section which shall be applied thereto: *Provided further,* That no part of any sum provided for herein shall be expended for construction on account of any lands in private ownership until all areas of land irrigable under the project and owned by any individual in excess of one hundred and sixty irrigable acres shall have been conveyed in fee to the United States free of encumbrance to again become a part of the public domain under a contract between the United States and the individual owner providing that the value as shown by said appraisal of the land so

conveyed to the United States shall be credited in reduction of the construction charge thereafter to be assessed against the land retained by such owner; and lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, upon such terms and conditions as he may prescribe.

SEC. 5. The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect; and the money hereby authorized to be appropriated shall be available for the acquiring of necessary right of way by purchase or judicial proceedings and for other purposes necessary in successfully prosecuting the work to complete the project.

3. The Act of March 7, 1928, 45 Stat. 200, 210–212, provides in pertinent part:

For all purposes necessary to provide an adequate distributing, pumping and drainage system for the San Carlos project, authorized by the Act of June 7, 1924 (Forty-third Statutes, page 475), and to continue construction of and to maintain and operate works of that project and of the Florence-Casa Grande project; and to maintain, operate, and extend works to deliver water to lands in the Gila River Indian Reservation which may be included in the San Carlos project, including not more than $5,000 for crop and improvement damages and not more than $5,000 for purchases of rights-of-way, $485,000: * * * *Provided further,* That the Secretary of the Interior is authorized to accept

the conveyance to the United States for the benefit of the San Carlos project of canals, reservoirs, pumping plants, water rights, lands, and rights of way, and he may pay for damage to crops and improvements incident to constructing project work: *Provided further,* That the Secretary of the Interior is authorized to contract with the State of Arizona, and with towns, villages, and municipalities of that State for delivering water to them from the San Carlos project upon such terms as he shall think best: * * *.

4. The Joint Resolution of March 7, 1947, 61 Stat. 8–9, provides in pertinent part:

> Whereas the San Carlos irrigation project, Arizona, has been constructed under authority of the Act of June 7, 1924 (43 Stat. 475), as supplemented and amended; and
>
> Whereas a contract has been executed pursuant to such legislative authority between the Secretary of the Interior and the San Carlos Irrigation and Drainage District providing for the repayment of the proper share of the cost of project irrigation works by the San Carlos Irrigation and Drainage District on behalf of project lands in private and public ownership; and
>
> Whereas, at the beginning of the 1947 irrigation season, due to extended drought, there is virtually a complete lack of surface and reservoir water supply on the project for the irrigation of the lands of the district and the Pima Indians of the Gila River Indian Reservation, thus creating an emergency: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be constructed an extension of the system of wells and pumping works of the San Carlos irrigation project, including the enlargement, rehabilitation, and repair of the present pumping and drainage works of the said project, and in order to expedite and assist the accomplishment thereof, the San Carlos Irrigation and Drainage District, is hereby authorized, (1) to develop underground water within and without the area of the San Carlos irrigation project exclusively for use as a part of the common stored and pumped water supply of said project; (2) to drill irrigation wells within and without the project area necessary for making underground waters available exclusively for use on all lands of the project, and equip the same with pumping facilities and equipment, including the deepening, replacement, and repair of existing project wells and equipment; and (3) to purchase with the consent of and under agreement with the owner thereof and to develop privately owned wells within or adjacent to the project areas, together with rights of way necessary to the operation of such wells: * * *.

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